

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE A. NOVA and DEPARTMENT OF THE NAVY,  
NAVAL SUPPLY SYSTEMS COMMAND, Treasure Island, Calif.

*Docket No. 96-1236; Submitted on the Record;  
Issued July 15, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On October 18, 1993 appellant, then a 37-year-old supply clerk, filed an occupational disease claim alleging that she sustained an emotional condition causally related to factors of her federal employment. In written statements she attributed her emotional condition to being harassed, including sexual harassment, by her supervisor, Mr. Jeffrey D. Fortman,<sup>1</sup> being unfairly denied leave and being charged with being absent without leave approval, being monitored closely at work, being treated rudely by Mr. Fortman in a meeting attended by appellant's union representative at which time he threw the representative out of his office, and not being able to change work stations.

In notes dated August 12 through October 4, 1993, Mr. Fortman stated that appellant had failed to follow the employing establishment procedures for requesting leave, that he had counseled appellant regarding the manner in which she performed her duties because he felt there were more efficient ways to accomplish the tasks, and that appellant sometimes had long conversations with customers which interfered with her work. He denied that he had thrown appellant's union representative out of his office on September 23, 1993. Mr. Fortman stated that he had merely asked the representative to leave because the representative would not cooperate with him in his conduction of the meeting and he terminated the meeting to be rescheduled for a later time.

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<sup>1</sup> Regarding the sexual harassment allegation, appellant stated that Mr. Fortman constantly asked her for a date, constantly called her into his office to discuss various matters, did not want her talking to male customers, and had touched her arm on one occasion.

In a report dated October 22, 1993, Dr. Jeremiah J. Wolohan, a psychiatrist, stated that appellant was under his care for acute anxiety reaction and acute depression and that, according to appellant, her symptoms were due to conflicts with her supervisor.

By decision dated January 11, 1994, the Office of Workers' Compensation Programs denied appellant's claim.

In a report dated October 5, 1993, received by the Office on February 15, 1994, Dr. Wolohan stated that appellant was disabled for work for two to three weeks due to her acute anxiety reaction and acute depression.

By letter received by the Office on September 14, 1994, appellant requested an oral hearing before an Office hearing representative.

By decision dated April 24, 1995, the Office hearing representative set aside the Office's January 11, 1994 decision and remanded the case for further development of the factual and medical evidence.

In a statement received by the Office on August 3, 1995, Mr. Fortman denied that he had harassed appellant. He stated that when appellant was transferred to his department she failed to show up for the first two days and did not call in to explain her absence. Mr. Fortman denied that he had sexually harassed appellant. He denied appellant's allegation that he did not want her to have conversations with male customers and stated that the majority of customers who came to the store were male and he simply did not want her to hold up the process of helping customers by carrying on long conversations with certain customers. Mr. Fortman denied that he had ever unfairly denied appellant's request for leave. He stated that he had at one time put appellant on leave without pay because she did not report to work and had not requested leave. Mr. Fortman noted that appellant had been moved six times within the employing establishment because she had problems with several supervisors and complained that the supervisors were "picking on her."

By decision dated September 1, 1995, the Office denied appellant's claim.

By letter dated January 3, 1996, appellant requested reconsideration of the denial of her claim.

In support of her request for reconsideration, appellant submitted copies of pages from an article on sexual harassment, a copy of an employing establishment memorandum regarding sexual harassment, a statement from a coworker who stated that Mr. Fortman did not like appellant, and copies of appellant's earning and leave statements.

Appellant also submitted a February 9, 1995 report from Dr. Wolohan in which he related appellant's belief that her emotional condition was caused by conflicts with her supervisor.

Appellant submitted a statement dated November 27, 1995 in which Ms. Pearl G. Ruchman, her union representative, stated that on September 23, 1993 she met with appellant

and Mr. Fortman to discuss his reason for charging appellant with being absent without official leave. She stated that she advised appellant not to answer a particular question and Mr. Fortman became “hostile” and stated that he wanted to talk directly to appellant. Ms. Ruchman stated that she told Mr. Fortman that she and appellant had certain rights and that he became irate and shouted at them and directed them to leave his office. Ms. Ruchman stated that she later returned to Mr. Fortman’s office with the union president and Mr. Fortman stated that he would not talk to the two union representatives at the same time and shouted at them that the meeting was over and denied their request to use the telephone on his desk.

By decision dated January 16, 1996, the Office denied modification of its September 1, 1995 decision.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

Workers’ compensation law does not apply to each and every injury or illness that is somehow related to an employee’s employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers’ compensation. Where the disability results from an employee’s emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Federal Employees’ Compensation Act.<sup>2</sup> On the other hand, the disability is not covered where it results from such factors as an employee’s fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>3</sup>

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.<sup>4</sup> This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected the condition or conditions for which compensation is claimed.<sup>5</sup>

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>6</sup> If a claimant does implicate a factor of

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff’d on recon.*, 42 ECAB 566 (1991); *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>4</sup> *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

<sup>5</sup> *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

<sup>6</sup> See *Margaret S. Krzycki*, 43 ECAB 496, 502 (1992); *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>7</sup>

Regarding appellant's allegations concerning the employing establishment's handling of leave matters, being monitored closely by her supervisor, being denied a change in work stations, and becoming upset concerning her supervisor's handling of a meeting attended by her union representative and herself, the Board finds that these allegations relate to administrative or personnel matters, unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Act.<sup>8</sup> Although the handling of such matters are generally related to the employment, they are administrative functions of the employer, and not duties of the employee.<sup>9</sup> However, the Board has also found that an administrative or personnel matter will be considered to be an employment factor where the evidence discloses error or abuse on the part of the employing establishment. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.<sup>10</sup> In this case, appellant's supervisor has denied being abusive or unreasonable in the handling of these administrative matters. Regarding the meeting on September 23, 1993, he denied that he had thrown appellant's union representative out of his office. Mr. Fortman stated that he had merely asked the representative to leave because the representative would not cooperate with him in his conduction of the meeting and he felt that he had to terminate the meeting to be rescheduled for a later time. Appellant submitted a statement dated November 27, 1995 in which Ms. Ruchman, her union representative, stated that on September 23, 1993 she met with appellant and Mr. Fortman to discuss his reason for charging appellant with being absent without official leave. She stated that she advised appellant not to answer a particular question and Mr. Fortman became "hostile" and stated that he wanted to talk directly to appellant. She stated that Mr. Fortman became irate and shouted at them and directed them to leave his office. She later returned to Mr. Fortman's office with the union president and Mr. Fortman stated that he would not talk with the two union representatives at the same time and shouted at them that the meeting was over and denied their request to use the telephone on his desk. The Board finds that this witness statement is not sufficient to establish error or abuse by Mr. Fortman in the handling of the meeting on September 23, 1993. It appears that Mr. Fortman wished to speak directly to appellant rather than to the union representative. His desire to conduct the meeting in this manner does not establish error or abuse. The fact that he asked appellant and the representative to leave when they, in his opinion, did not cooperate in the way in which he wished to conduct the meeting does not establish error or abuse. The representative alleged that Mr. Fortman "shouted" at them to leave but Mr. Fortman acknowledged that he merely asked them to leave. Even if he had "shouted" at them to leave,

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<sup>7</sup> *Id.*

<sup>8</sup> See *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Michael Thomas Plante*, 44 ECAB 510, 516 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

<sup>9</sup> *Id.*

<sup>10</sup> See *Richard J. Dube*, 42 ECAB 916, 920 (1991).

such that this action might be deemed abuse, there is no medical evidence which establishes that appellant had an emotional condition because Mr. Fortman shouted at her during the September 23, 1993 meeting. In a report dated October 22, 1993, Dr. Wolohan, a psychiatrist, stated that appellant was under his care for acute anxiety reaction and acute depression and that, according to appellant, her symptoms were due to conflicts with her supervisor. However, he did not identify the specific events or situations which appellant believed to be the cause of her condition and he did not provide his own opinion as to whether any work incidents caused or contributed to appellant's condition. In a report dated October 5, 1993, received by the Office on February 15, 1994, Dr. Wolohan stated that appellant was disabled for work for two to three weeks due to her acute anxiety reaction and acute depression. However, he provided no opinion as to the cause of the condition. Appellant also submitted a February 9, 1995 report from Dr. Wolohan in which he related appellant's belief that her emotional condition was caused by conflicts with her supervisor but he did not state his opinion as to whether any work incidents had caused appellant's condition. Thus, appellant has failed to provide sufficient evidence to establish error or abuse in the handling of these administrative matters and she has not established a compensable employment factor under the Act in this respect. Further, as noted, the medical evidence does not establish that her condition was caused by the employing establishment's handling of these administrative matters.

Appellant has also alleged that harassment and discrimination on the part of her supervisor contributed to her claimed stress-related condition. To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of his regular duties, these could constitute employment factors.<sup>11</sup> However, for harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.<sup>12</sup> In the present case, the employing establishment denied that appellant was subjected to harassment or discrimination and appellant has not submitted sufficient evidence to establish that she was harassed or discriminated against by her supervisor.<sup>13</sup> Appellant alleged that her supervisor, Mr. Fortman, sexually harassed her and harassed her generally but she provided insufficient evidence to establish her allegations.<sup>14</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

For the foregoing reasons, appellant has not established any compensable employment factors under the Act and, therefore, has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>15</sup>

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<sup>11</sup> *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

<sup>12</sup> *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

<sup>13</sup> See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

<sup>14</sup> See *William P. George*, 43 ECAB 1159, 1167 (1992).

<sup>15</sup> As appellant has not established any compensable employment factors, the Board need not consider the

The decisions of the Office of Workers' Compensation Programs dated January 16, 1996 and September 1 and April 24, 1995 are affirmed.

Dated, Washington, D.C.  
July 15, 1998

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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medical evidence of record; *see Margaret S. Krzycki, supra* note 6.